DOCUMENT RESUME

ED 288 915 UD 025 769

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TITLE	The Educational Rights of Homeless Children.
INSTITUTION	Harvard Univ., Cambridge, Mass. Center for Law and Education.
SPONS AGENCY	Legal Services Corp., Washington, D.C.
PUB DATE	Sep 87
NOTE	10p.
AVAILABLE FROM	Center for Law and Education, NEWSNOTES, Larsen Hall, 14 Appian Way, Cambridge, MA 02138 (single copy free).
PUB TYPE	Collected Works - Serials (022)
JOURNAL CIT	NEWSNOTES; n38 Sep 1987
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Access to Education; Civil Rights; *Economically Disadvantaged; Educational Needs; *Elementary Secondary Education; *Equal Education; Family Problems; Federal Legislation; *Homeless People; Housing Needs; Peer Acceptance; *Poverty

ABSTRACT

This newsletter focuses on the educational rights of the homeless. It contains the following articles: (1) Homelessness: A Barrier to Education for Thousands of Children; (2) New Federal Act Protects Education Rights of Homeless Children; (3) Suggested Questions Regarding the Education Provisions of the McKinney Homeless Assistance Act; and (4) Advocates in New York Challenge Denial of Education to Homeless Children. The extent of homelessness and its effect on children are discussed. Research has indicated that 43% of homeless children do not attend school, and that among the reasons are families' inability to meet residency requirements or to provide the schools with the necessary records, and lack of transportation. There are also indications that the homeless children are not made welcome in the schools. (PS)

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The Educational Rights of Homeless Children

CENTER FOR LAW AND EDUCATION, INC. NEWSNOTES NO.38
SEPTEMBER, 1987

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CENTER for LAW and EDUCATION, Inc. NEWSNOTES

Larsen Hall — 14 Appian Way Cambridge, Massachusetts 02138 (617) 495-4666

No. 38 **September, 1987**

Homelessness: A Barrier to Education for Thousands of Children

Homelessness, a societal crisis now claiming an increasing number of families and children as its victims, is inflicting special damage on homeless school-aged youths by barring or impeding these children's access to education.

Recently-gathered information from a number of sources indicates that the transient, uncertain existence of the homeless and the application of state or local school attendance and transportation policies to homeless students have combined to keep these children out of school, or to make their continued attendance an almost impossible task for families without permanent shelter. In an effort to address this problem, children's advocates have collected data about the existence and extent of barriers to educational access, worked for the passage of federal legislation to guarantee homeless students their educational rights, and, in New York, are beginning to litigate the question of whether residency laws and regulations can effectively keep homeless children out of the classroom.

Although the total number of homeless persons in America is often disputed (estimates range from 300,000 to three million), there is a growing body of data indicating that the number of families and children who live without permanent housing is increasing at an alarming rate. A 1987 study by the New York-based Partnership for the Homeless stated that homeless families now comprise the largest portion of the homeless population, and, based on data provided by forty cities, reported that children under the age of sixteen constituted between 18.2% and 19.8% of those cities' homeless. The results of a U.S. Conference of Mayors survey of twenty-nine cities reported that families represent approximately one-third of the homeless populations in those cities, and that the number of homeless families is expected to increase.

In addition, advocates are beginning to collect data dealing specifically with the impact of homelessness on education. The preliminary results of an eight-city survey by the Child Welfare League of America indicate that 43% of homeless school-aged children do not attend school. Seventeen cities responding to the U.S. Conference of Mayors survey reported that homeless children experienced problems relating to unstable school attendance and lack of access to education.

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Special Issue

The Educational Rights of Homeless Children

Photo by Marianne Gontarz

The articles in this issue were researched and written by Center for Law and Education Staff Attorney Shelley Jackson, with the assistance of Lucy R. Watkins, Education Advocate, and Paul Weckstein, Director of the Center's Washington, D.C. office.

New Federal Act Protects Education Rights of Homeless Children

Two years of legislative advocacy on behalf of the children of homeless families and homeless or runaway youth came to fruition in late June, when Congress enacted the "Stewart B. McKinney Homeless Assistance Act". This legislation, an omnibus package of several programs benefitting homeless persons, includes a provision designed to ensure that no homeless child is denied access to education. President Reagan signed the McKinney Act into law on July 22, 1987, and it is effective upon enactment.

The Act's education provision states Congressional policy that homeless children have access to a free, appropriate public education on an equal basis with non-homeless children, and that state residency laws not be used as a tool to bar homeless youngsters from school. The new law establishes a $12.5 million, two-year grant program to assist states and localities in implementing Congressional policy through study, planning and the provision of education to homeless children.

The McKinney Act guarantees all states a share of five million dollars annually in federal fiscal years 1987 (currently in progress, ending September 30, 1987) and 1988 (beginning October 1, 1988), distributed according to a formula that parallels state funding allocations under the Chapter 1 program. Each recipient state will be given at least $50,000 per fiscal year. Although states do not have to apply for these grants, the Act sets aside money for every state.

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Homelessness

(continued from page 1)

The lack of access to school or difficulties in obtaining an education are among the myriad of problems that confront families struggling to survive on the streets, in shelters, in "welfare motels" and other temporary accommodations.

In February, 1987 the Center for Law and Education, the National Coalition for the Homeless, the Homelessness Exchange and the National Network of Runaway and Youth Services collaborated on a survey of approximately 110 shelter providers (including family shelters, soup kitchens and shelters for runaway youth) throughout the country. The results showed that one-third of these providers knew of denials of educational access to the homeless.

Shelter providers reported (1) cases in which residency laws were used to bar continued access to the schools or school districts where students had been enrolled before their homelessness required a temporary move out of the school attendance area, (2) cases in which residency laws were used to preclude initial access to schools or school districts serving the attendance area where a homeless student is temporarily housed and (3) cases in which schools used guardianship laws as a barrier, by refusing to consider a homeless child as a resident unless the child lived with a parent or legal guardian. These guardianship requirements can affect children who are separated temporarily from their family, and living with a friend or relative who is not a legal guardian, as well as homeless runaway youth.

In addition, approximately 23% of those responding to the survey of shelter providers knew of instances in which homeless students' educational access had been hampered by the inability to obtain prior school or health records. Nineteen percent reported the denial of special services, including special education, and 15% reported that inadequate or unavailable transportation had been a barrier to educational access.

Anecdotal information from published newspaper reports, and the first-hand experiences related by shelter providers, flesh out these statistics to paint a revealing picture of the hard life of a homeless student. Every day, these children confront abject poverty, poor nutrition, transiency and frequent absences in efforts to complete their homework, remain attentive in class and continue to advance in their studies. In some cases, the stress of homelessness and the need to meet other family needs relegates a child's education to low priority status. Homeless students often endure the ridicule of their peers, and are derided as "hotel kids". Dr. Ellen Bassuk, a psychiatry professor at the Harvard University Medical School, studied 156 Massachusetts homeless children, and found evidence of the damage inflicted by a life on the streets and in temporary accommodations. Many very young children in this study suffered from developmental delays, and, on the average, manifested more of some behavioral problems than young non-homeless children who had been diagnosed as "emotionally disturbed". School-aged children who completed Bassuk's psychological tests often scored above the recommended cut-off points for psychiatric referral and evaluation. Thus, homelessness itself may be creating a generation of children who have special educational needs, even as these youths' lack of permanent shelter bars them from the classroom and from receiving other services often offered to special needs students.

Photo by Jim Hubbard

No Action From The States

In contrast with the experiences and reports of shelter providers and others who have direct, daily contact with homeless families and children, state Department of Education officials appear largely uninformed about the presence of homeless children within their state, the extent of these children's educational needs and whether homeless youths receive an education at the local level. In March, 1987, the Center for Law and Education sent a questionnaire regarding state practices and policies for homeless students to the chief state school officers in the fifty states and the District of Columbia, and received twenty-three responses. The majority of the respondents, however, had no statewide data on the number of homeless children within their jurisdictions or whether those children were able to obtain an education. The majority of states had no uniform plan for ensuring that homeless students received an education.

Thirteen respondents either returned the questionnaire unanswered, claiming they had "insufficient data" to complete it, or reported that they did not compile the information it requested. Four state school officials indicated that other non-education state agencies might have the requested information, and forwarded the questionnaire to those agencies. Of these four, only the District of Columbia has subsequently responded.

Only eight respondents, from Alaska, the District of Columbia, Hawaii, Maryland, New York, North Carolina, South Carolina and Wyoming, provided any substantive information in response to the Center's survey. In almost all cases, however, these respondents did not answer every question. Six of these states reported that they have a homeless, school-aged population, but only two officials (from New York and D.C.) were able to estimate how many homeless children attended school in their jurisdictions. Only Hawaii reported that guidelines existed for determining where homeless children will be educated, but failed to elaborate. Only New York reported that state and/or local initiatives had been proposed to address the educational rights of homeless children.

The reports from state Department of Education officials and from shelter providers differed most sharply regarding the outright denial of or barriers to educational access. Only the New York Department of Education was aware of

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Homelessness

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the practice of school districts denying access to homeless children, perhaps in part because this issue has been litigated in that state. Similarly, only New York was aware of homeless children being denied access to various special educational programs (special education for the disabled or vocational education, for example). Only three respondents reported arrangements to provide and pay for transportation if a homeless child continues to attend school in a former district of residence, and four reported arrangements for transportation if the child goes to school in area in which the family's temporary accommodations are located. And, although shelter providers cited the inability to obtain records as the primary ancillary barrier to educational access for the homeless, not a single state Department of Education reported that a child's inability to obtain records prevent him or her from entering the classroom.

Local and National Advocacy

As documentation regarding the educational problems of the homeless piles up, these children's needs are also getting increased attention through legislative and litigation efforts. In late June, Congress enacted an omnibus homeless aid package, including a provision designed to provide educational access to all homeless children. (See "New Federal Act Protects Education Rights of Homeless Children," in this issue.)

To date, three cases, all in New York, have challenged the outright denial of educational access to homeless students. In each case, local school districts relied on their interpretation of New York residency standards to hold that the affected homeless plaintiffs were not "residents" of the school district and barred the students from school. In the absence of a state law or policy establishing a uniform approach to educating homeless children, the resolution of each of these disputes has been governed by a "case-by-case" determination standard set down by the New York Commissioner of Education. This litigation has produced mixed results; one family succeeded in forcing the family's prior district of residence to allow its homeless children to attend school there, but two subsequent plaintiffs, who also wanted their children to continue attending the schools in which they were enrolled prior to becoming homeless, were ordered to enroll the children in the school district in which the family's temporary shelter was located. (See "Advocates in New York Challenge Denial of Education to Homeless Children,' in this issue.)

In addition, at least two other non-education cases brought on behalf of homeless families discuss homelessness as a barrier to educational access. In *Massachusetts Coalition for the Homeless v. Dukakis*, an ongoing case, homeless plaintiffs charge that state welfare benefits are insufficient to allow recipients to obtain affordable housing in which to raise their families. Through affidavits, these plaintiffs voiced concerns about the impact of homelessness on their children's education. For example, one plaintiff stated that she and her two children had moved three times in four months within one city, and that, as a result, her daughter had changed schools three times. Another plaintiff reported her difficulties in transporting her five school-aged children, including two handicapped children, back to school in their former school district from temporary motel accommodations sixteen miles away. In *Hansen v. McMahon*, a case challenging the California Department of Social Service's refusal and inability to provide overnight shelter for homeless families, plaintiffs' affidavits detailed cases in which homeless children fell behind academically and missed long periods of school while their families sought shelter. One shelter operator submitted an affidavit in *Hansen*, stating that she knew of homeless children who had not attended school in two years. (This case was ultimately decided in favor of the plaintiffs.)

The Center for Law and Education continues to gather data on the educational needs of the homeless, and will disseminate information about legislative mandates and advocacy strategies that may assist homeless students. The Center will also participate in a panel on the needs of homeless clients at the upcoming December, 1987 National Legal Aid and Defender Association convention in Miami. Legal services attorneys and other advocates who wish to share or receive information on this issue should contact Shelley Jackson at the Center's Cambridge office.

New Federal Act

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Any state choosing to apply to the Department of Education (ED) for these funds must use its grant to (1) gather data on the nature and extent of the problems of homeless youngsters' access to and placement in schools, and (2) develop and implement "state plans", ensuring that all homeless children are educated. States can either create or designate a state office as "Coordinator of Education of Homeless Children and Youth", which will be charged with carrying out these functions. These coordinating offices must submit interim reports to ED on their data collection by December 31, 1987, and file final reports by December 31, 1988.

State plans for education of the homeless must contain a provision authorizing state or local education agencies, the parents or guardians of homeless children, homeless or runaway youth or social workers to make decisions about the educational placement of and provision of services to homeless children. These plans must also establish a mechanism to resolve disputes concerning homeless students' educational placement.

"Best Interest of the Child" is the Determining Factor

State plans must, "to the extent practicable," be designed so that the affected local educational agencies will comply with the Act's provision for equal educational access for the homeless. Localities in participating states must enroll children who become homeless in either the school district in which the child was originally enrolled or the school district in which the child is actually living, whichever is in the child's "best interest". This provision of guaranteed access affects both homeless children who are living with their parents in temporary housing, and children whose homeless parents have placed them temporarily with others. Thus, schools can neither insist that children living apart from their parents reside with a legal guardian in order to be enrolled in school, or refuse to admit these youngsters unless homeless parents surrender their legal parental rights.

Localities must also provide educa-

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ED Begins Plans for Implementation

The Department of Education (ED) has begun planning implementation strategies for the elementary and secondary education provisions of the McKinney Act. ED has assigned primary responsibility to Tom Faegen, in the Department's Office of Compensatory Education Programs. He can be contacted at 2043 FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. 20202 (202)732-4682.

According to Faegen, ED will notify states immediately about the McKinney Act by sending copies of the education provisions, and notice of the availability of grant monies, to state department of education officials in the fifty states and the District of Columbia. Education grant funds for federal fiscal year 1987 have already been appropriated.

Deadlines for grant applications will be announced shortly. At this writing, ED had not decided whether it would promulgate regulations to implement the new law, or issue non-regulatory guidelines instead.

New Federal Act

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tional services, such as special education, compensatory education for the disadvantaged, programs for limited-English-proficient students, vocational education, programs for the gifted and talented, and school meals to homeless children on the same basis as these services are provided to non-homeless students. The joint statement of conferees accompanying the Act states that transportation is also one of the services to be provided to homeless students in a non-discriminatory manner. Local educational agencies must also maintain the records of homeless children so that they are available in a timely manner when these children move to a new school district.

In addition to the funds provided under the basic grant program, the Act sets aside $2.5 million in competitive demonstration grants for federal fiscal year 1988. States and localities wishing to establish "exemplary programs" for educating the homeless can apply to ED for these funds, provided that the applicant is located in a state which has submitted a state plan.

Congress retained a supervisory role regarding education for the homeless by requiring reports from ED on each state's interim and final data reports within forty-five days after these reports are due. ED must also monitor and review state and local compliance with the McKinney Act in accordance with the provisions of the General Education Provisions Act (GEPA). GEPA gives ED the authority to require states to submit a plan for monitoring and enforcing local compliance with federal education grant program requirements. In addition, GEPA provides for the submission of state and local grant applications to ED that include assurances of monitoring by states, the availability of necessary technical assistance to local agencies, and state and local consultation with persons affected by federally-funded programs. ED must also give Congress an overall report on activities under the Act at the end of each fiscal year. This report is intended to cover activities in all states, including states that do not participate in the program. The General Accounting Office must give Congress a nation-wide estimate on the number of homeless children by June 30, 1988.

Although any state accepting McKinney Act funds must comply with the Act's requirements, states do not have to participate in this grant program. Non-participating states need not abide by the specific planning and data collection mandates that accompany the receipt of grant monies, but advocates may be able to argue that these states are nevertheless bound by the general equal protection policies on which the Act is based. These policies, advocating equal educational access for the homeless and rejecting the use of residency laws as a bar to school enrollment, are included in the Act's general provisions, and are not tied to the receipt of grant monies.

Advocates Can Play A Role

Successful implementation of the McKinney Act depends primarily on participation of all states in the program, and the content and scope of each participating state's plan. To that end, homeless clients and their advocates may want to take an active role in determining how state and local education officials plan to implement the Act (see suggested questions in box), and in paying particular attention to certain issues, including decisions governing these youngsters' educational placement and the provision of transportation to them.

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Suggested Questions Regarding the Education Provisions of the McKinney Homeless Assistance Act

1. Will this state apply for a McKinney Act grant for the education of homeless children and youth?

2. What state office will be the designated "Coordinator of Education of Homeless Children and Youth"?

3. Will advocates for the homeless and homeless persons be involved in gathering data about the number, location, nature and extent of the problem of educating homeless youngsters?

4. What will be the process for developing the "state plan" to ensure all homeless school-aged children are educated? Will this process include: a) public hearings? b) consultation with or involvement of homeless persons and their advocates?

Under the state plan:

5. Who will determine the "best interest" of a homeless student? Will parents be deemed to know the child's "best interest"? If not, how will the parent's views be taken into account? In the case of homeless or runaway youths, will their views and those of shelter counselors be taken into account?

6. What will be the standard for the "best interest" of a homeless child? Will this standard give enough weight to:
   - the need to avoid disrupting the child's education?
   - problems parents and children may face if forced to commute long distances without having transportation provided by a local school district?
   - Parents' intent about future residence — to either return to the child's prior school district, or to remain in the school district in which the family is temporarily sheltered?

7. Will school placement decisions meet the overall legal mandate to avoid discriminatory treatment of homeless children? Will these decisions assure:
   - That families residing in shelters are not treated differently from other, non-homeless residents when they seek to enroll their children in the attendance area where they are sheltered?
   - That families intending to return to their prior district of residence, and wishing to continue enrollment in that prior district, are not treated differently from other, non-homeless families who travel temporarily outside the district?
   - That children of homeless families who have been temporarily placed with a friend or relative will not be barred from school on the condition that the homeless parents surrender their legal parental rights?
   - That homeless or runaway youth will not be barred from school because they are not living with a legal guardian?

8. What procedures will be used to resolve disputes over a homeless student's educational placement? Do these procedures provide for a full and impartial determination of the child's best interest (independent decision maker, adequate notice, right to representation, to present and cross examine witnesses and evidence, findings, and appeal)? Do these procedures assure that a child's education will not be disrupted during the pendency of any dispute?

9. Will transportation always be provided to the school that meets the child's best interest?

10. How will state and local officials ensure that homeless students receive equal access to special educational services?

11. How will state and local officials ensure that the school records of homeless children are available in a timely manner when these children move to a new school district?

12. Are state school residency requirements being reviewed and revised to ensure that they do not interfere with the provision of a free and appropriate public education in the school that meets a homeless student's best interest?

13. Will state or local education officials be encouraged to coordinate with agencies responsible for placing homeless families in order to avoid disruption of education?

14. How will state officials publicize the Act's provisions and the requirements included in state plans to local education agencies?

15. What provisions will be made for monitoring local compliance with the provisions of the McKinney Act? Do these monitoring and enforcement tools include:
   - Site visits?
   - Collection of local data and reports?
   - Review of educational placement decisions?
   - Consultation with homeless persons and their advocates?
   - Well publicized complaint procedures?
   - Strict and effective timelines and remedies for correcting deficiencies?
   - Technical assistance?

New Federal Act

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The law seeks to avoid instances in which a child who becomes homeless during the school year is effectively barred from attending school in either the child's district of origin or district of temporary residence, if each district asserts that the child fails to meet applicable residency requirements (see summary of the *Delgado* case in "Advocates in New York Challenge Denial of Education to Homeless Children," in this issue). In those states receiving grants, homeless children are to be enrolled in one of the two school districts, in accordance with the child's "best interest", rather than on the basis of administrative convenience or cost. States must authorize state or local education agencies, the parents of homeless children, homeless or runaway youth or social workers to determine this standard.

Advocates could seek to ensure that states, in adopting a substantive standard for the best interest of the child, address the primacy of the parents' role. This parental involvement is supported by the Act's explicit recognition that homeless parents may be authorized to make decisions about their children's education, and by the need to formally acknowledge the view of parents who object to placement decisions through the dispute resolution mechanism required in each state plan. Advocates can play a major role in developing impartial procedures for resolving disputes, and for assuring a process that is speedy and non-disruptive to the child's education.

In addition, conference committee language states that local educational agencies must provide transportation "at the same level and to the same degree as ... offered to other students in that particular school." Advocates should rely on this language to ensure that localities plan transportation routes that are accessible to homeless children. In addition, when a proper placement decision, serving the best interest of the child, is made, transportation must obviously be provided where needed.

Other programs within the McKinney Act's education and training provisions include a $17.5 million adult literacy initiative and a $14 million job training program. The entire Act includes assistance in the areas of housing, health care (including mental health), emergency food and shelter, community services and special programs for homeless veterans. The Act carries a total authorization of $443 million for fiscal year 1987 and an additional $616 million for fiscal year 1988. Congress recently appropriated $355 million for FY 1987.

The Center for Law and Education will monitor the implementation of the McKinney Act's education provisions. Advocates and clients with questions about the Act or those seeking copies of it, as well as those with future information about its execution in their state should contact Shelley Jackson at the Center's Cambridge office.

Advocates in New York Challenge Denial of Education to Homeless Children

New York, generally regarded as the state with the country's largest reported homeless population, has been the focus of the most formal legal advocacy on the denial of education to homeless children, and the source of the most comprehensive information from state and New York City education officials on the nature and scope of this problem.

Homeless clients and their advocates have challenged the use of New York residency requirements as a barrier to educational access three times, once before the state Department of Education and twice in state court. The first legal case to consider this issue, *Richards v. Board of Education of Union Free School District Number Four*[1], was brought to a New York Department of Education administrative hearing. The plaintiff in this case, Mary Richards, was a homeless woman with two teen-age children from Port Chester, New York. The Richards family lost its home in the spring of 1984 when the Westchester County Department of Social Services decided that the apartment in which they lived was too hazardous, and relocated them.

During the first five months of the 1984-85 school year, the Richards lived in six different motels in five different school districts. The plaintiff retained strong community ties to Port Chester, and searched diligently for permanent housing so that the family could return there. Despite these efforts, the doors of the Port Chester schools were closed to the Richards youngsters. School officials prevented the plaintiff's daughter from enrolling in high school, and dismissed the plaintiff's handicapped son from middle school after he had attended classes for approximately six weeks. Officials justified this exclusion by arguing that the Richards children no longer satisfied state residency requirements, even though the Superintendent of Schools was aware that the family was currently homeless, staying in various school districts for only a brief period of time, and that the plaintiff intended to return to Port Chester.

After efforts to negotiate with school officials failed, Richards, represented by attorney Jerrold Levy at Westchester Legal Services, requested that the New York State Commissioner of Education declare all homeless children in temporary accommodations to be residents of the school district where they last had permanent housing.

The *Richards* case turned on the Commissioner's interpretation of New York's school residency statute, which states only that a person between five and 21 years old is "entitled to attend the public schools maintained in his district of residence."[2] The Commissioner, relying on existing case law, found that "a residence is not lost until another residence is established through both intent and action expressing such intent."

In July, 1985, the Commissioner decided the *Richards* case in favor of the plaintiff, but denied the across-the-board relief she had sought for all homeless students. The decision in *Richards* held that the plaintiff and her children remained residents of the Port Chester school district, and reached this holding by relying on the plaintiff's numerous and various efforts to return there. These efforts included attempting to obtain a public housing subsidy in Port Chester, continuing ties with church and family members there, receiving mail at a post office box there, and virtually living in Port Chester, returning to the various motels in which the family was living only to sleep. "Petitioner has not expressed or implied any intention of abandoning her residence in the district or any intention of establishing a residence in another district", the Commissioner held. "Until such an intent is expressed or can be inferred from her actions, petitioner and her children have not lost their status as residents of the Port Chester-Rye Union Free School District."

Commissioner Ordered Case-By-Case Decisions

The Commissioner rejected plaintiff's request that the Department of Education issue a declaratory ruling that would affect all homeless children. Finding that "determinations of residency are mixed questions of law and fact which do not

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Advocates in New York

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lend themselves to general declarations", and arguing that policy determinations might not be served by requiring all homeless students to return to the district from whence they came, the Commissioner held that absent legislation, each conflict concerning the residency of a homeless child must be determined on a case-by-case basis.

This case-by-case approach set the stage for two subsequent court cases from Long Island, New York. *Delgado v. Freeport Public School District*[3] concerned a welfare recipient and her two sons, who had lived in the town of Freeport for twenty months before becoming homeless in December, 1985. The local social services agency placed the Delgado family in an emergency shelter for one month, and then in temporary housing in the Roosevelt School District.

Both the Roosevelt and the Freeport school districts refused to admit the Delgado children. Each district claimed its position was supported by state residency law, with Roosevelt arguing that the family had established no permanent residence within its jurisdiction, and Freeport asserting that the children had lost their residency status when they lost their home.

The plaintiff in this case preferred that her children attend the Freeport school district, but the *Delgado* court held the family's residence was Roosevelt, and that the children had to attend school there. Focusing on the fact that the children were currently in Roosevelt, the court dismissed the uncertainty surrounding the duration of their stay as "irrelevant". The court also found that the plaintiff failed to establish "significant or determinative ties" to Freeport. "What ties were shown amount merely to living there", *Delgado* held. "Such ties can be developed with ease wherever the family lives."

The third denial of education case, *Mason v. Board of Education, Freeport Union School District*[4], also involved the Freeport school district's application of residency requirements to homeless children. The Mason family, including a mother and five school-aged children, lived in Freeport for ten years before becoming homeless in October, 1986. In the seven months following their dislocation, the Masons moved eight times in five different school districts.

The Mason children were dismissed from the Freeport schools for lack of residency in November, 1986, and never returned to school during the 1986-87 academic year. Attorneys from the Nassau/Suffolk Law Services Committee (also counsel to the plaintiffs in *Delgado*) attempted to make a factual distinction between *Mason* and *Delgado*, by relying on the Mason family's long-standing ties to Freeport, the extremely temporary nature of shelter the family had received since becoming homeless, and the plaintiff's efforts to return to Freeport.

Photo by Marc Young

In April, 1987, a state court judge rejected these arguments, and ruled that the Mason children's "bodily presence" established their residence for school attendance purposes. At the time of the court's ruling, the Masons were living in Long Beach, New York, and the court held that the children were residents of that community, "notwithstanding the fact that such residence may not have been accompanied by an intention to dwell there permanently."

According to Edward Luban, the Nassau/Suffolk Law Services Committee attorney representing the Masons, this family ultimately found housing in late April, 1987, in Malverne, a Long Island town a few miles from Freeport. While the family searched for housing, the Mason children remained out of school. Luban reports that the plaintiff attempted to enroll her children in the Malverne schools after settling there, but her efforts were delayed while the children's school records were obtained and trans-

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Advocates in New York

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ferred. By the time these records arrived, Luban said, the Malverne school system said it was too late to enroll the Mason children in school, because the academic year was almost over.

Luban said that Nassau/Suffolk is considering an appeal in *Mason*, and cited both a "legal argument and an equitable argument" for challenging the court's ruling. "The legal argument is based on residency," Luban said. "The law says you don't lose residency in one place until you acquire it in another, and that didn't happen here. As for the equitable argument, I think you just have to look at what happened in this case."

The facts of and erratic results in each of these cases demonstrate the difficulties homeless students and their families face in continuing a child's education, and the wide range of possible decisions when school residency determinations are applied to these children on a "case-by-case" basis. If New York applies for and accepts homeless education funds under the new McKinney Homeless Assistance Act, such decisions would turn on the "best interest of the child" involved, rather than on interpretations of state residency law.

Homeless families and school-aged children in New York City won a court victory on an important related issue — the provision of or payment for school transportation — in the 1986 case of *McCain v. Koch*.[5] *McCain* upheld a lower court decision[6] ordering the New York City Department of Social Services (DSS) to provide adequate transportation allowances for homeless students. *McCain* ordered the city to pay the actual transportation costs incurred by children who, as a result of their homelessness, have a long commute between their school and a shelter, motel or other temporary housing. Local DSS officials must give these allowances to homeless schoolchildren until the Department of Education provides students with transportation passes to cover these costs, the court held. In addition, the *McCain* court ruled that the city must pay the transportation expenses of homeless parents who wish to accompany their children to school if the children are too young to make this commute alone.

Unlike most states, New York education officials do collect information regarding the numbers of homeless children within the state, and are beginning to devise strategies to ensure equal educational access for these students. In response to a March, 1987 survey conducted by the Center for Law and Education in cooperation with other advocacy groups, the New York State Education Department reported that 10,000 students (including 8,000 primary- and 2,000 secondary-aged youths) throughout the state are without permanent housing. Two New York State Education Department employees are charged with the responsibility for ensuring that homeless students enroll and remain in school.

NYC Ombudsman Appointed

In late March, 1987, the New York City Department of Education, which has approximately 7,000 school-aged homeless youth within its jurisdiction, appointed its first "ombudsman" to provide educational services for children in temporary housing. That ombudsman reported that the City has established a "Central Hotel Project" to deal with the educational placement and attendance problems of these children. The city said that other efforts, including tracking and monitoring systems to assess school attendance and special education referrals (an estimated 8% to 10% of student hotel residents receive special education services), are also planned.

Photo by Jim Hubbard

In response to the Center's survey, New York officials at the city and state levels suggested outreach to and support services for homeless parents as the most effective way to keep youngsters in school while they live in temporary shelters. A New York state official noted that legislation to address the problem of educational access for the homeless has been pending in New York for three years, and indicated that passage of such legislation would be "a good start." "But," she continued, "our schools resent these children. We must look not only at educational concerns but at the social and economic causes for homelessness and our lack of response to these root causes. We focus on refugee camps in Lebanon, yet we have a generation of children growing up in our own version of internment camps in New York State."

1. No. 11490, N.Y. Dept. of Education (1985).
2. *See* N.Y. Civ. Serv. Law §3202.
3. 499 N.Y.S.2d 606 (N.Y. Sup.Ct. 1986)
4. No. 2865/87 (N.Y. Sup.Ct. mem. op. April 22, 1987).
5. 117 A.D. 198 (N.Y. App. Div. 1986).
6. *Matter of Fulton v. Krauskopf*, 127 Misc.2d 20 (N.Y. Sup.Ct.1984).

Center for Law and Education *NEWSNOTES*

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The Center for Law and Education, Inc. is funded by the Legal Services Corporation, Washington, D.C. to serve as a national legal support center on the education problems of low-income students.

Single copies of this newsletter are distributed free to each legal services program's main and branch offices, to specialists in education advocacy, and to subscribers to other Center periodicals. Please send us the names and addresses of legal services clients and education advocates who should be added to our mailing list.

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AROUND THE CENTER

Discipline Manual Update A supplement on the topic of "Search and Seizure" has been prepared, to update Section IV.B. of *School Discipline and Student Rights: An Advocate's Manual*. It includes an analysis of the U.S. Supreme Court decision in *New Jersey v. T.L.O.*, and other significant cases in this area that have been decided since the publication of the manual in 1982. The supplement also provides an update on the applicability of the exclusionary rule to school discipline cases. Copies of the 14-page supplement are available free to legal services programs and attorneys who provide free legal representation to LSC-eligible clients. Other persons may order it for $2.50, including postage and handling. Other sections of the manual are in the process of being updated.

Training Materials Available Copies of materials which have been compiled for training events conducted by the Center for Law and Education are available for distribution on request. The training packets can serve as reference guides on legal claims in respective areas, or as models for the development of materials for local, statewide or regional education law training sessions. Write to the Center's Cambridge office for a list of training materials and ordering information.

New Staff Members Lucy R. Watkins has joined the staff of the Center's Washington, D.C. office, as an Education Advocate. Her extensive experience in the field of youth employment and training at the local, state, regional, and national levels includes a stint as the Executive Director of Jobs for Youth-Boston, Inc. She has held a variety of policy and program development and consultant positions with such agencies as the Southern Regional Council, the Ford Foundation, the Commission on the Future of the South, and the North Carolina Fund, the first statewide anti-poverty program in the country. Lucy is currently focusing her attention on the federal Chapter 1 compensatory education program, vocational education, and the educational rights of homeless children.

Bonnie Wyneken has been hired to work in the Center's Cambridge office as a secretary and publications assistant. She has previous experience as a legal secretary, and has run her own free lance typing and editing service as well as a jewelry business.

Litigation Staff attorney Bob Pressman recently participated as co-counsel in the 24-day trial in *Ayers v. Allain*, a case contending that segregation and discrimination continue in Mississippi's system of higher education. The private plaintiffs in *Ayers* are represented by North Mississippi Rural Legal Services, which requested the Center's assistance in the case.

In late June, staff attorney Kathy Boundy submitted an *amicus curiae* brief to the United States Supreme Court in *Honig v. Doe*, a case which addresses the disciplinary exclusion of disruptive handicapped students from school. Participating as *amici* were Advocates for Children of New York, Inc., Disability Law Center, Inc., Massachusetts Advocacy Center, and the San Francisco Lawyers' Committee for Urban Affairs. The case will be argued in October, 1987.

Training Lucy Watkins attended two regional meetings of the National Coalition of Title I Chapter 1 Parents which were held in March, 1987. At the Region 5 (Midwest Region) meeting in Chicago, Lucy gave a presentation on the reauthorization of Chaper 1, and amendments that relate to improving parent involvement, quality of programs, and other aspects of the program. She also conducted two workshops on those topics at the Region 1 (Northeast Region) meeting in Hartford, Connecticut.

Special Education Advocates A group of forty experienced special education advocates from the New England area gathered in Cambridge on June 19th at a day-long meeting sponsored by the Center for Law and Education and the Disability Law Center. The agenda included sessions on the statutory duties of state education agencies and issues of shared responsibility for educational services, as well as updates on developments in the areas of attorneys' fees, early childhood education, and discipline issues. This was the second meeting of this discussion group, which plans to meet periodically on a regular basis. Center staff attorney Kathy Boundy is available to consult with special education advocates in other regions of the country who would like to organize similar groups.

Board Meeting The next meeting of the Center's Board of Directors will be held on Saturday, September 19, 1987 at 9:00 a.m. at the Center's Cambridge office.

Law Fellow Elissa Stein, recipient of a Harvard Law School Student Funded Fellowhip, is spending ten weeks at the Center this summer, working to update the 1982 manual *School Discipline and Student Rights*, as well as on other research and writing projects. Elissa is entering the final year of a four-year joint degree program at Harvard's Law School and John F. Kennedy School of Government.

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